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October 24, 2003

7.. pages including cover sheet.

PERSON TO:	COMPANY/DEPT TO:	FAX NUMBER:
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Examiner P. Baskar

Group Art Unite= 1645

703 308 4242

PERSON FROM:	COMPANY/DEPT FROM:	FAX NUMBER:
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William P. Ramey III

Intervet, Millsboro  
Patent Department

302 934 4305

RE: USSN 10/087,573

Attorney Docket Number I 2001.004 US

Receipt is acknowledged of the papers and fees listed below in the above-identified application:

Response to Restriction Requirement (5 pages)

Certificate of Transmission (1 page)

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Schettters et al  
USSN 10/087,573  
Attorney Docket Number I 2001.004 US

Response to Restriction Requirement of Sept. 24, 2003 (5 pages)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the application of:

SCHETTERS, et al.

Serial Number: 10/087,573

Group Art Unit: 1645

Filed: February 28, 2003

Examiner: Baskar, P.

For: BABESIA CANIS VACCINE

Corresponding to: EP01200816.5, filed 06 March, 2001

**Response to Restriction Requirement of September 24, 2003 and Preliminary Amendment**

Assistant Commissioner of Patents  
Washington, D.C. 20231

Dear Sir,

**I. Introduction**

Applicants hereby respectfully respond, as follows, to the Restriction Requirement of September 24, 2003 and make a Preliminary Amendment: Please charge any required fees and credit any credits to deposit account 02-2334.

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## II. Claim Amendments

Claims 1-31 (Cancelled, without prejudice or disclaimer to pursue the Claims of Group II)

32. A *Babesia canis* associated protein, said protein having a molecular weight of 15 kD and comprising an amino acid sequence that is at least 80% homologous to the amino acid sequence as depicted in SEQ ID NO:2 or an immunogenic fragment of said protein.
33. The *Babesia canis* associated protein of claim 32 wherein the amino acid sequence is at least 85% homologous to the amino acid sequence as depicted in SEQ ID NO: 2, or an immunogenic fragment of said protein.
34. The *Babesia canis* associated protein of claim 32 wherein the amino acid sequence is at least 90% homologous to the amino acid sequence as depicted in SEQ ID NO: 2, or an immunogenic fragment of said protein.
35. The *Babesia canis* associated protein of claim 32 wherein the amino acid sequence is at least 95% homologous to the amino acid sequence as depicted in SEQ ID NO: 2, or an immunogenic fragment of said protein.

Claims 36-63 (Cancelled, without prejudice or disclaimer to pursue the Invention of Group II)

64. (New) A vaccine for combating *Babesia canis* infections, comprising an immunogen selected from the group consisting of a nucleic acid or a protein according to Claim 32 and a pharmaceutically acceptable carrier.
65. (New) The vaccine of claim 36 further comprising an adjuvant.
66. (New) The vaccine of claim 36 further comprising an additional antigen derived from a virus or microorganism pathogenic to dogs or a nucleic acid sequence encoding said antigen.
67. (New) The vaccine according to claim 38, wherein said virus or micro-organism pathogenic to dogs is selected from the group of *Ehrlichia canis*, *Babesia gibsoni*, *vogeli*, *rossi*, *Leishmania donovani* complex, Canine parvovirus, Canine distemper virus, *Leptospira interrogans* serovar *canicola*, *icterohaemorrhagiae*, *pomona*, *grippotyphosa*,

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*bratislava*, Canine hepatitis virus, Canine parainfluenzavirus, rabies virus, *Hepatozoon canis* and *Borrelia burgdorferi*.

Response to Restriction

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**III. Remarks and Conclusion**

Claims 32-35 and 64-67 are currently pending. Claims 1-31 and 36-63 have been cancelled without prejudice or disclaimer to pursue the Claims of Invention II, as defined by the Examiner. No estoppel. The cancellations made were not based on reasons related to patentability under 35 U.S.C. §§ U.S.C. 101, 102, 103 and/or 112. No estoppel should result from said cancellations. Applicants expressly reserve the right to pursue the non-elected subject matter in a divisional application.

In response to the Restriction Requirement of September 24, 2003, Applicants elect Group II, Claims 32-35, with traverse.

Applicants have added new Claims 64-67. Such new Claims are directed towards a vaccine comprising the protein of Claims 32-35. The added Claims will pose no undue burden on the Examiner and Applicants respectfully request their consideration. The Claims are added before any prosecution on the merits.

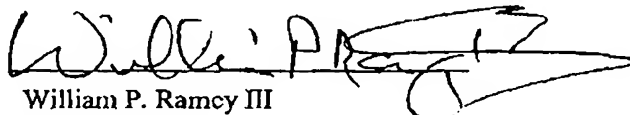
In conclusion, Applicants reaffirm the election of Group II. Further, Applicants assert the Claims are in a condition for allowance and such action is respectfully requested. Should the Examiner determine an interview would best further the prosecution of the case, the Examiner is invited to contact the undersigned attorney at (302) 933-4034.

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Respectfully Submitted,



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Registration Number 44,295

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